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ABSTRACT

The history and issues leading to the Supreme Court decision which recognized the special educational needs and rights of limited English speaking students is traced in this article. Also discussed are the ensuing community struggles for the right to fashion the appropriate relief mandated by the Supreme Court and for the right to have quality bilingual bicultural education for students of all language and cultural backgrounds. The suit of Lau v. Nichols relating to San Francisco Unified School District was the last resort after all known channels for seeking equal educational opportunity had been exhausted. Paralleling the deteriorating situation in the school district were the accelerating juvenile delinquency rates in the 1960's in the Chinese community. The significance of the Lau v. Nichols decision nation-wide was immediately felt. There are, according to the U.S. Office of Education, approximately five million school children in the U.S. covered by the decision. Beyond its impact on public education, this decision has long-range legal implications on both the effectiveness and quality of government sponsored social and legal services now provided to non-English speakers across the nation. (Author/AM)

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LAU v. NICHOLS

History of a Struggle for Equal and Quality Education (An Excerpt) *

By L. Ling-Chi Wang

On January 21, 1974, the Supreme Court of the United States decided in the case of Lau v. Nichols that the failure of the San Francisco Unified School District (SFUSD) to provide special assistance to nearly 2000 Chinese American students who do not speak English denies them a meaningful opportunity to participate in the public educational program and thus violates regulations and guidelines issued by the Secretary of Health, Education and Welfare (HEW) pursuant to Section 601 of the Civil Rights Act of 1964. Recognizing the special educational needs and rights of limited English-speaking students for the first time in the history of the U.S., the Supreme Court held that:

> .....there is no equality of treatment merely by providing students with the same facilities, textbooks, teachers, and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.

To expect limited English-speaking students to know English before they can effectively participate in the educational program, the Court declared, "is to make a mockery of public education." The Supreme Court sent the case back to the U.S. District Court in San Francisco with an order that "appropriate relief" be fashioned by the SFUSD and that it be subject to the approval of the court.

The purposes of this article are to trace briefly the history and issues leading to the Supreme Court victory, and the ensuing community struggle first, for the right to fashion the "appropriate relief" mandated by the Supreme Court and secondly, for the right to have quality bilingual-bicultural education for students of all language and cultural backgrounds.

The long struggle for the right to an equal education and for community control of the school provides valuable insight and understanding into the nature and working of the American legal and educational institutions and gives clues to future strategies for bringing about institutional and systemic changes in America.

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I. HISTORY OF LAU V. NICHOLS

On March 25, 1970, Kinney Kinmon Lau and 12 non-English-speaking Chinese American students, over half of them American-born, filed suit in Federal District Court in San Francisco against Alan Nichols, President of the San Francisco Board of Education on behalf of nearly 3,000 Chinese-speaking students. Their class action suit, Lau v. Nichols, alleged that Chinese-speaking children have a right to an education which they were not receiving in the SFUSD because they needed special help in English. The denial of such an education, according to their parents, "doomed them to become dropouts and to join the rolls of the unemployed." The plaintiffs asked the Federal District Court to order the Board of Education to provide special English classes with bilingual teachers through claims that laws enacted by both Congress and the California State Legislature demonstrated the need for bilingual teachers. Without bilingual teachers, the plaintiffs contended that even special instruction in English would be a fruitless gesture: students would merely parrot teachers rather than learn English.

The suit was not developed in a vacuum; it was the last resort after all known channels for seeking equal educational opportunity had been exhausted. For a number of years, the Chinese American community had tried innumerable meetings, heated negotiations, documented studies, peaceful and violent demonstrations, and concrete proposals to rectify the educational deprivation suffered by the limited English-speaking Chinese American students. While the number of new immigrants entering the school system continued to escalate each year by leaps and bounds since 1962, these good faith efforts of the Chinese American community resulted invariably in token gestures --bandaids here and there in the form of 40-minute English class a day for those fortunate enough to get in. For example, no formal special language program existed in the elementary and secondary schools before 1966. In that year, the first pilot program of teaching English as a second language (ESL) was established. The program provided 40 minutes of ESL class for some limited English-speaking Chinese each day; for the remainder of each day, they had to attend regular classes taught only in English and compete helplessly and hopelessly with their English-speaking peers in all subject areas. In San Francisco, this approach is known as the ESL-pull-out or one-a-day bitter pill.

In the following year, the school district identified 2,456 limited English-speaking Chinese students and appropriated $88,016 to establish hastily a Chinese ESL Program, misnamed the Chinese Bilingual Education Program, staffed by mostly non-bilingual ESL teachers. Again, many Chinese-speaking students did not even get the minimal benefit of one ESL class a day. In 1968-69, the budget for the program was increased to $280,469, but with no visible result as far as providing an adequate education for these 2,456 Chinese American students and thousands of students of other language backgrounds. In fact, The Education Equality/Quality Report, No. 2, issued in February 1969 by the SFUSD, found the on-going ESL program "Woefully inadequate." According to the report, the program lacked ESL teachers (only 14 full-time teachers in elementary

schools and 4 in junior high), an inadequate in-service teachers training program and a "language specialist on the administrative level to design an effective program that can be implemented in an orderly manner throughout all grade levels." The report also noted that ESL materials were"virtually non-existant beyond the beginning level: and that there was no personnel assigned to develop materials and curriculum. In spite of such mild self-indictment, the report dealt exclusively with language acquisition and ESL classes: it made no reference to the use of Chinese language as a medium of instruction and the need for the Chinese-speaking students at all grade levels to learn and prgoress academically in other subject areas in a language they understood while they acquired English-language proficiency.

Illustrative of the indifferent attitude in San Francisco was the school district's acknowledgement of the following facts found by the Federal Court on May 28, 1970:

1. 2,856 Chinese-speaking students in SFUSD needed special instruction in English.

2. Of these, 1,790 received no special help or instruction at all, not even the 40-minute ESL a day.

3. Of the remaining 1,066 who did receive some help, 623 received help on a part-time basis and 433 on a full-time basis.

4. Only 260 of the 1,066 receiving special instruction in English were taught by bilingual teachers.

Paralleling the deteriorating situation in the school district was the accelerating juvenile delinquency rates in the 1960's in the Chinese community. According to data released by the San Francisco Police Department, the juvenile delinquency rate for Chinese between 1964 and 1969 rose by 600%. The school data admitted openly in the Federal Court and the police records are clearly related to each other.

According to the above court record, only one-fourth of the limited English-speaking Chinese students were getting help in English, most through non-bilingual teachers, and little or no help in other subject matters. Students were placed arbitrarily into classrooms by ages, irrespective of English-language proficiency and achievement in subject areas, and sent through the school system. The negative and demoralizing effects of this repressive approach was fully recognized ironically by the school district. In a report issued in 1969, the school district freely admitted:

> When these (Chinese-speaking youngsters) are placed in grade levels according to their ages and are expected to compete with their English-speaking peers, they are frustrated by their inability to understand the regular work.... For these children, the lack of English means poor performance in school. The secondary student is almost inevitably doomed to be a dropout and another unemployable in the ghetto.

During the District Court hearing in Lau v. Nichols, the school district acknowledged the grave needs of these children to receive special instruction, but vigorously contended that such needs did not constitute legal rights because they were provided the same educational setting offered to other children throughout the district. A bilingual education program, according to the attorney representing the school district, would be offered only "gratuitously," as personnel permitted, rather than as a matter of right and duty.

In its decision, the Federal District Court agreed with the school district and denied the limited English-speaking Chinese students any relief. The Court expressed sympathy for the Chinese American students, but concluded that their rights to an education and to equal educational opportunities had been satisfied as "they received the same education made available on the same terms and conditions to the other tens of thousands of students in the SFUSD." It is important to point out that, though the Chinese American students contended that the "surface equality" of identical textbooks, teachers and classrooms afforded no education to non-English-speaking children, the Federal District Court ruled that the school district had no legal duty to rectify this situation.

The Chinese-speaking students appealed the decision to the U.S. Court of Appeals for the Ninth Circuit. Their contention that the lower court decision should be reversed was supported by the United States' Government, which filed an amicus curie brief. However, a three-judge panel, in a two to one decision, affirmed the lower court order on January 8, 1973 and accepted the school districts' argument that its responsibility to non-English-speaking children "extends no further than to provide them with the same facilities, textbooks, teachers, and curriculum as is provided to other children in the district." The panel further observed that the problems suffered by the Chinese American children were "not the result of law enacted by the state....but the result of deficiency created by (the children) themselves in failing to learn the English language."

The implications of the appellate court decision are devastating: "surface equality" was ruled adequate and legal and the language deficiency of the non-English-speakers, as if they knew no language and possessed neither culture nor knowledge, was self-created and self-imposed. In other words, if they happened to be Native Americans, Chicanos, or immigrants from non-English-speaking countries, they were entitled to attend schools, but they had no right to expect the same educational benefits as the English speakers.

Faced with this disasterous decision, the Chinese American students petitioned the U.S. Supreme Court to take their case and reverse the appellate decision. On June 12, 1973, the Supreme Court granted the petition to hear the case and oral arguments were heard on December 10, 1973, again with the support of the U.S. Government and a number of national organizations representing educators and language communities.

Finally, on January 21, 1974, after nearly four long years of deprivation and lengthy litigation, the U.S. Supreme Court delivered its unanimous decision which directly refuted both the position and language of the lower courts.

> ....There is no equality of treatment merely by providing students with the same facilitities, textbooks, teachers and curriculum; for students who do not understand English are effectively foreclosed from any meaningful education.

Even though the SFUSD strenuously tried to demonstrate its good faith efforts in providing special education through ESL and some federally and state-funded bilingual education programs, the Supreme Court brushed aside the school district's good intention and excuse of financial constraint and zeroed in on both the quality of participation of limited English-speaking students in classroom activities and on the educational outcome of the Chinese-speaking students. The limited English-speaking students, according to the Supreme Court decision, must be able to participate effectively in the classroom and they must receive an education that is both "meaningful" and "comprehensible." This could be achieved only through bilingual-bicultural education.

The significance of the Lau v. Nichols decision nation-wide was immediately felt. Not since the Brown v. Board of Education decision in 1954 which outlawed school segregation was there such an important decision on education handed down by the Supreme Court. There are, according to the U.S. Office of Education, approximately five million school children in the United States covered by the decision. Congress immediately amended in August 1974 the bilingual education law by expanding Federal involvement in bilingual education and the U.S. Deparment of H.E.W. announced in January 1975 its plan to conduct Lau enforcement activities nation-wide to assure equal educational opportunity for the limited English-speaking students. Nine "Lau Centers" were established under Title IV of the Civil Rights Act of 1964 to assist school districts across the United States to develop bilingual educational programs to meet the Lau mandate. To help identify the precise number of children of limited English-speaking ability, HEW initiated in June 1975 a project to develop language survey instruments. States such as Massachusettes, Illinois, Texas, New Jersey and Colorado now have state laws mandating bilingual education for students of limited English-speaking ability. To date, all court decisions which have applied and interpreted Lau v. Nichols have all concluded that Lau requires bilingual-bicultural education to overcome the deprivations suffered by the limited English-speaking children. Similarly, in a first nation-wide report on bilingual-bicultural education, the U.S. Commission on Civil Rights urged on May 13, 1975, that bilingual-bicultural education be provided for students of limited English-speaking ability.

Beyond the impact on public education, the Lau decision has long-range legal implications on both the effectiveness and quality of government-sponsored social and legal services now provided to non-English-speakers across the nation. For example, the new Voters Rights Act of 1975 cited Lau v. Nichols as one of the bases for extending voting rights to non-English-speaking citizens. Other issues will undoubtedly follow in the near future.

With a decision as far-reaching and significant as Lau v. Nichols on the future of education for limited English-speaking children, one naturally expected the SFUSD, the defendant in the case, to respond promptly and creatively to the educational needs of children from various language and cultural backgrounds, especially when the school district now had a chance to reorder its priorities and develop a meaningful educational plan in response to the Supreme Court mandate. As mentioned above, the Court remanded the case back to the Federal District Court in San Francisco and the SFUSD was expected to submit an "appropriate" educational plan for court approval. Unfortunately, the SFUSD acted as if it were under no court order for a long time. When confronted by communities in San Francisco to respond, it reacted with arrogance and contempt. It is to this phase of community struggle that we now turn.